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Kuehne + Nagel, Inc.  
National Head Office and New York Branch  
10 Exchange Place, 19<sup>th</sup> Floor  
Jersey City, NJ 07302  
Telephone: (201) 413-5500  
Telefax: (201) 413-5777

//Sent Electronically 9/23/04//

Secretary @ FMC.Gov  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573-001

JB/mj

September 23, 2004

Re: Tariff Exemption Petitions Nos. P3-03, P5-03, P7-03, P8-03, P9-03, P1-04,  
P2-04, P4-04

I am Juerg Bandle, Senior V.P., of Kuehne + Nagel, Inc., which is the agent of

Blue Anchor Line  
Division of Transpac Container System Ltd.  
Hongkong

Bond # 8395689

We are writing this letter in support of the National Customs Brokers and Forwarders Association of America, Inc. for a Limited Exemption From Certain Tariff Requirement, Petition NO. P5-03. and the subsequent Reply of the National Customs Brokers and Forwarders Association of America, Inc., submitted on September 8<sup>th</sup>, 2004.

As agent of Blue Anchor Line, the world's largest NVOCC, we have expressed our position that public tariffs for NVOCCs have no useful purpose with our letter, addressed to the Commission, dated September 3<sup>rd</sup>, 2003. These tariffs are not used by the shipping public as most pricing is done individually in consideration of the complete service package provided by the NVOCC-Logistics Provider.



Our company is quoting hundreds of rates daily, not only in the U.S.A. but in all countries where ocean transportation services from or to the U.S.A are available. These rates do not only cover the actual ocean and/or intermodal transportation but do include many other services specifically required by the shippers, which are increasingly looking for integrated service offerings.

Having the global NVOCC community adhere to strictly defined rate publishing requirements, which serve no specific purpose other than possibly being used for arbitration or compliance has become a mundane task. This is made even more difficult by the fact that no other country than the U.S.A. is asking for this data to be published. Even China, which announced the introduction of a tariff filing or publishing requirement, has never actually implemented this system.

Ocean carriers have traditionally and historically been tariff driven primarily with the intention of sharing this information with other carriers under the umbrella of global anti-trust immunity. NVOCCs never enjoyed this privilege and have therefore always been exposed to a more competitive pricing environment. Not only do NVOCCs not have anti-trust immunity but there is also a much larger number of intermediaries locally and globally active than there are ocean carriers, resulting in an extremely competitive and, therefore, shipper friendly transportation market.

The competitive environment, bonding and licensing requirements ensure that shippers can enjoy the best possible services at the best price. Rates, Fees and Service Descriptions are usually confirmed in writing with both the shipper and NVOCC having relevant documentation available in either soft-or hardcopy format. In the event of disputes, these documents can be used by all parties involved, including the Commission, for arbitration purposes.

We have evaluated The Joint Supplement Comments Requesting Expedited Adoption Of A Conditional Exemption From Tariff Publication filed on August 2<sup>nd</sup>, 2004, and reached the conclusion that this proposal is of no real value as it doesn't provide for the relief previously sought by the industry. To the contrary, it is increasing the administrative and legal burden as well as the tariff/contract maintenance expenses. In fact, the confidential service contract becomes redundant in case NVOCCs are exempted from publishing rates. It seems to be unclear as to why these NVOCCs are asking for the right to file confidential service contracts. What do they want to achieve? Equality with ocean carriers? As we all know, this objective can only be achieved by buying and/or operating vessels and not by being able to file service contracts. Is it the ability of being able to pay retroactive volume discounts or rebates? If the Commission grants the NCBFAA exemption proposal involving "memorialized rate or rate agreements", discounts can be part of the NVOCC – Shipper Service Agreement,



available to both parties and the FMC upon request. So why make an already complex, time-consuming and costly NVOCC tariff system even worse by requiring NVOCCs to work with confidential contracts that have to be filed with the Commission even though no one will look at them?

If the carriers are looking for a so-called "quid-pro-quo" in order to consent to NVOCC tariff relief, it is more than likely that our industry would have no objection if carriers are accorded the same relief. The objections to tariff exemption for ocean carriers will not come from shippers or NVOCCs but the regulatory agencies, which attempt to monitor the carriers' actions in relation to their anti-trust immunity. Carriers, on the other hand, are using their tariffs and the regulatory regime to their advantage by filing all sorts of surcharges and fees, not actually shown in their service contracts. Virtually all carrier-NVOCC service contracts refer to fees, charges and surcharges published in their tariffs. It is virtually impossible to monitor the carriers' tariffs and charges. To make this situation worse, different carriers file different charges or charge levels, making it impossible for the NVOCCs to adopt a unified charge in their own tariff. As the NVOCC usually sells a service and carrier mix with the surcharges separately shown – in line with what the underlying carriers assess – accurately maintaining the NVOCC tariff becomes a near impossible task.

In consideration of our points explained above, the proposal submitted by the NCBFAA, requesting the elimination of rate tariff publication but requiring that NVOCCs retain rate offers in some type of written format receives our full support. This proposal is a fair, realistic and practical approach towards further deregulation without completely eliminating the Commission's oversight of our industry.

Sincerely,  
KUEHNE + NAGEL, INC.  
agent of  
Blue Anchor Line  
Division of Transpac Container System Ltd.



Juerg Bandle  
Senior Vice President